

AFFIDAVIT

I, the undersigned,

RAFIQUE BAGUS

do hereby make oath and say that the facts hereunder deposed to by me are true and correct and within my personal knowledge unless expressly stated. I make this affidavit in reply to the request for information delivered to me by the SECRETARY of the JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE which is dated 19 January 2021 with tracking number RPS 18/0339/PB.

1.1 Prior to my appointment as Chairperson of the Board of Alexkor my previous experience was as follows and I held the following qualifications:

- a) CEO Trade and Investment SA 1995/6-1999; DDG Department of Trade and Industry 1999-2002; Special Advisor Minister of Public Enterprises 2002-2004; Executive Director of Ehlobo Holdings 2004/5-2009/10; CEO of Morning Tide investments 2010-2012.

- b) BA Economics
Honors Degree Economics
Masters Degree Economics

1.2 I was appointed as Chairperson of the Board in October 2012. I don't have a copy of the appointment letter as Chairperson of the Board but this can be obtained from the Department of Public Enterprises (DPE)

1.3 I don't have full details of my remuneration package as this was in 2012-2015 and I no longer have the records. The Department of Public Enterprises would definitely have this. The total package was in the region of R1.3m which was for the role of both Chair of Alexkor Board and the PSJV Board. There were no bonus or incentives in place. It was a flat fee irrespective of the time dedicated to the tasks.

1.4 I was appointed Chair of Alexkor Board. My understanding was that the Chair of the Board of Alexkor automatically becomes the Chair of the Board of the PSJV. This is a policy of the DPE and is written into the MOA of Alexkor. This can be verified by the DPE and the documentation governing this can be sourced from them. The Department provided me with formal letter confirming my appointment as Chair of the Board of the PSJV. I do not have a copy of this letter but it too can be obtained from the DPE.

1.5 Mr Carstens was already appointed by the time I was appointed as the Chair of Alexkor and the PSJV. The Alexkor representatives on the PSJV Board are appointed by the DPE. I had no role in their appointment.

1.6. The appointment of the CEO of Alexkor was done in terms of the Board Charter and executed by the Remuneration and Employment Committee. I was a member of

the committee which was chaired by another Alexkor Director. I had no involvement in the appointment of the Alexkor Board. Like me the Board was appointed by DPE.

1.7 The post was advertised in accordance with the policy guidelines stipulated by the DPE and enshrined in the company policy and procedure documents. The recruitment process was done according to the guidelines stipulated by the DPE. An external recruitment agency was appointed to manage the process. The post was advertised in the mainstream media. I do not have copies of this documentation but they must be available from DPE and the Company itself.

1.8 I was not involved in the appointment of Mr Carstens so cannot comment on who approved his appointment.

In terms of the CEO of Alexkor, the sub-committee of the Board of Alexkor make recommendations to the full Board. The Board accepted the recommendations and makes a submission to the DPE for their internal approval process. The submission to the DPE must provide a shortlist of 2 or 3 candidates for their final approval. The DDG responsible for Alexkor manages this entire process within the DPE. This process culminates with a letter of confirmation from the office of the Minister of Public Enterprises.

1.9 The Richtersveld Community filed a land claim against the state in approximately 1994. The Deed of Settlement (DOS) is the settlement agreement between the State and the Richtersveld Community in respect of this land claim. This settlement agreement stipulates that the state and Alexkor specifically, must exit the diamond mining after a period of approximately 10 years and or, once the PSJV is established on sound commercial footing. The State is required, in terms of the DOS, to sell its interest in the diamond mining venture to the Richtersveld Mining Company. During the induction of the new Board of Alexkor in 2012, the leadership of the DPE (2 Deputy Directors General, Chief Directors, Directors and other officials etc) instructed the Alexkor Board to come up with a diversified mining strategy. This process was led by the DDG responsible for Alexkor. This was required in terms of the legal agreements between the State and the Community. This meeting was minuted and the information can be obtained from the DPE.

After receiving this input from the responsible DDG of DPE, the Alexkor Board held a strategy planning session which was externally facilitated. Mr Khoza attended the strategic session. Many mining opportunities were proposed which included manganese, platinum, coal, lime etc. This was finally shortlisted to coal and lime. The rationale provided by Mr Khoza for coal and lime was that their operations were very similar to the current opencast mining operations for Alexkor in Alexander Bay.

The rationale for considering a supply of coal and lime to Eskom was as follows:

a) Eskom is a SOE and so is Alexkor. At the time and this is still the case today, Eskom was having challenges with a reliable supply of coal. More specifically, the quality of the coal was often substandard and the pricing a major challenge. As an SOE needing to diversify, it made sense for Alexkor to consider entering into a supply arrangement with Eskom. This would alleviate Eskom's supply constraints and give them security of supply. And at the same time fast track Alexkor



diversification from the diamond mining in Alexander Bay as required by the DOS and DPE.

b) Since Eskom itself had several dormant coal assets, the high level thinking was that Alexkor would develop these assets for the primary benefit of Eskom in the form of a reliable coal supply that is critical for energy security for SA. Eskom would enter into a cost plus contract to ensure it received a reliable coal supplier and Alexkor was able to remain commercially viable with a small margin on the coal provided. Alexkor had less of a need for maximizing profits as do private and listed companies. As an SOE it needed to contribute to the development of the country but at the same time be commercially viable. As long as it was able to remain solvent in performing its operations, it would suffice. Providing Eskom with a safe and reliable supply of coal was of paramount and strategic importance for the country. This was a win-win for all stakeholders.

c) This plan was developed at the Board strategic session and presented firstly to the DPE officials at a DG and DDG level. This strategy was approved at this level and then presented to the Minister, Deputy Minister, by the DDG responsible for Alexkor together with the Management and Board. This strategy was approved by the Shareholder representative.

1.10 Essentially Eskom would provide Alexkor with a guaranteed off-take agreement for coal and lime. This would allow Alexkor to raise funding to develop the coal assets without requesting funding from the Shareholder.

1.11 As Chairman of Alexkor and the PSJV, I never took any decisions regarding the company independently. All decisions were taken by the Board as a collective. This would be well documented in the Board minutes and recordings. Neither I, nor the Board asserted or determined that diamond mining (marine and land) were no longer viable and that coal was a better option. The DPE as Shareholder representative instructed Alexkor Board to find alternate mining opportunities and projects. The DPE engagement in this regard was led by the then DDG responsible for Alexkor. The minutes of the induction of the new Alexkor Board by the DPE will reflect this. I understood that the reason for this position by DPE and the DDG was informed by the DOS which was an Order of the Court.

1.12 Prior to the commencement of duties by the new Board of which I was Chair, the previous Board of the PSJV, together with the Management, commissioned a study to determine exactly the life of mine and the potential areas for mining diamonds on a commercially viable basis in Alexander Bay. Alexkor has been mined extensively since the late 1920s. It is envisaged that between 30-60 million carats have been mined during this time. There are no detailed and accurate record keeping especially in the formative years of the mining activity prior to 1994. It is alleged that the diamond production at Alexkor was used by the previous government to fund armament purchases from France that were off balance sheet transactions.

The study was conducted by Z Star an internationally reputable and professional consultancy company in this field. Again, neither I nor the new Board had any involvement in the appointment of Z Star and were guided by the PSJV and Alexkor



SOE management regarding this. The Z Star report indicated that there was approximately 3-6 million carats possibly left in Alexander Bay, of which approximately 2m was still commercially viable to mine. With conventional mining of other minerals like gold, platinum and coal for example, geological studies and surveys and an extensive drilling program can predict with a high level of accuracy the extent of the resource base underground. With alluvial diamond mining this is not the case given the nature of deposits. Since deposits are carried by rivers and the ocean, the level of accuracy is below 30% at times. Many people liken alluvial diamond mining to gambling, especially in a place like Alexander Bay where the resource was already extensively exploited for over 80 years.

To illustrate this point practically the Muisvlak project is a good example. The Z Star study identified a previously mined area called Muisvlak as a potential source of diamonds. On the basis of this study and additional surveys and drilling and processing plant was established at Muisvlak and some R80m invested. The PSJV Geologist at the time confirmed to the Borad that this was the correct area to make the investment. This is documented and can be obtained from PSJV Board minutes. The initial results from the mining process proved successful only for the yield to drop below 20% of the original yields. This report is available from the PSJV, Alexkor and the DPE.

1.13.1 Sharma was a Director in the Trade Relations Division of the DTI when I was the DDG of Trade and Investment at DTI.

1.13.2 I don't recall any association or relationship with this person

1.13.3 I met Ajay during my time in the DTI. Together with the GCIS, DTI, and my division specifically, was the coordinator of the Presidents International Marketing Council. I was a member of this council which was Chaired by President Mbeki. Ajay was appointed as a member of the council. We interacted as members of the Marketing Council.

To the best of my recollection :

1.13.4 No association or relationship

1.13.5 No association or relationship

1.13.6 No association or relationship

1.13.7 No association or relationship

1.13.8 No association or relationship

1.14 As a member of the International Marketing Council I was invited, together with other members, to Ajay functions. The annual Diwali etc. I along with other members of the IMC was invited to the wedding and attended with my daughter, the wedding was also attended by various cabinet ministers and government officials. While the invitation was for 5 days, my daughter and I did not spend the entire period of time at the wedding..

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1.15. I never had such a discussion with Mr Korabie or any other member of the Board or Tender Committee. The process to appoint a company to market the PSJV diamonds followed a very transparent and clear process. This process is dictated by the company procedures. As the Board, we and I as Chair were guided by management in this process. The entire process up to the selection of a short list was executed by management in accordance with the company procedures. The tender committee of which I was an ordinary member and not the Chair, made an adjudication based on the information available. The tender document scorecards and minutes will reflect this. The forensic investigation and report concluded by the Audit Committee post to my departure as Chair of the Board confirmed no flouting of tender procedures by any member of the Board. Dr Paul as the Chair of the Tender Committee will confirm this. It would be interesting to understand how Mr Korabie makes these allegations and yet he is the only member of the Tender Committee to score SSI at 100%. Both DR Paul and I scored them below 70. This is clear in the forensic report.

1.15.2 I have no knowledge of such a conversation nor do I believe I made any such assertion. The process to appoint a marketing company was transparent and in accordance with company guidelines and procedures.

1.16 This is explained above. I should further explain that various Board functions including the tender process were delegated to various committees each of which had their own chairperson who was responsible for setting agendas and driving and managing the functions of the particular committee. As stated above I was not the chair of the Tender Committee. I neither set its agendas nor was I responsible for, and nor did I manage its functions.

1.17 The process to appoint a company was done through a transparent tender process that is guided by company policy. This was strictly adhered to and confirmed in the forensic report.

1.18 My term expired and I decided not to renew my contract. When I arrived at Alexkor as Chair of the Board and PSJV, the company had gone from 200000 carats per annum to 25000; 1600 employees to 88 and a loss of over R150m. When I left, production levels had increased from 25000 to 80000 and continued to grow for a little while after I left. Employment grew from 88 to 550 permanent employees and the company was cash positive with over R100m in reserves. I fulfilled my obligations and thought it was a good time to leave.

To the best of my knowledge and belief:

1.19 I have no knowledge of this.

1.20 I had no involvement

1.21 I have no involvement or knowledge of this.

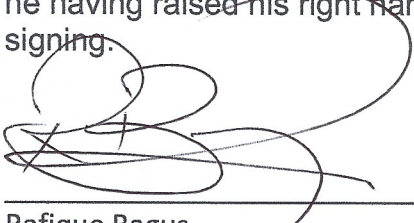
1.22 I had no involvement or knowledge of this.



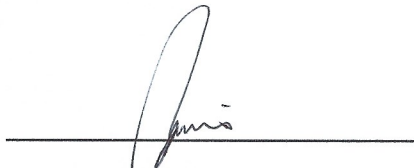
1.23 My response to the Rule 3.3 Notices which were served upon me is to reiterate and place on record that I deny being involved in any unlawful activity whether as alleged by the witnesses concerned or at all. I deny the witnesses version of events in so far as these versions purport to implicate me in any unlawful activity. I note that much of this evidence is in reality based on speculation and/or hearsay and/or rumours and/or assumptions which are false. To the extent that any allegation made by any of these witnesses is at variance with what I have stated in this affidavit then such allegation is categorically denied.

I remain available and willing to answer such questions as the Commission may require to the best of my knowledge and ability. I do not believe that I have in my possession, power or custody any documents relevant to issues which are the subject matter of this Inquiry and in any event I will not destroy any documents which may be in my possession should I find any at a later date but will submit same to the Commission. I point out that such documentation would constitute Company property and so I would not have retained same on my departure from Alexkor.

Thus sworn to and signed this 27th day of January 2021 in the presence of the undersigned Commissioner of Oaths, the deponent having acknowledged that he knows and understands the contents of this affidavit which he has read and that he has no objection to taking the oath which he regards as binding on his conscience, he having raised his right hand and uttered the words "So help me God" prior to signing.



Rafique Bagus



Commissioner of Oaths

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